

## SENATE BILL No. 30

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10.2-3; IC 5-10.3-8-15; IC 5-10.4-4-10; IC 36-8-8.

**Synopsis:** PERF and TRF benefits. Provides that certain members of the public employees' retirement fund (PERF) and the Indiana teachers' retirement fund (TRF) may withdraw the member's annuity savings account (ASA) if the member has separated employment and is not employed in a covered position for 30 days. (Current law provides that such members must have separated employment and not be in a covered position for 90 days.) Removes the requirement that certain members must be either a member of: (1) PERF after December 31, 2008; or (2) TRF after June 30, 2009; in order to request a distribution from the member's ASA. Authorizes the PERF and TRF to adopt rules to allow a member that designates more than one beneficiary to allocate benefit shares in percentage increments. Provides that, before July 1, 2012, an active member of the 1977 police officers' and firefighters' pension and disability fund (1977 fund) who is eligible to receive an unreduced retirement benefit may elect to receive at retirement a partial lump sum distribution equal to the member's monthly benefit times the member's years of creditable service in exchange for an actuarially reduced monthly benefit. Provides that an annual cost of living adjustment for monthly retirement benefits received by a member or survivor of the 1977 fund may not be used to decrease the member's monthly benefit. Requires the PERF board of trustees, one time before January 1, 2015, and every five years thereafter, to evaluate statewide physical and mental examination standards used by the 1977 fund. Makes a technical correction to resolve conflicting language. (The introduced version of this bill was prepared by the pension management oversight commission.)

**Effective:** Upon passage; July 1, 2010.

### Boots

January 5, 2010, read first time and referred to Committee on Pensions and Labor.

C  
o  
p  
y



Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

## SENATE BILL No. 30

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-10.2-3-6.5, AS AMENDED BY P.L.115-2009,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 6.5. ~~(a) This section applies:~~

4 ~~(1) after December 31, 2008, to a member of the public~~  
5 ~~employees' retirement fund; and~~

6 ~~(2) after June 30, 2009, to a member of the Indiana state teachers'~~  
7 ~~retirement fund.~~

8 ~~(b)~~ **(a)** A member who meets all of the following requirements may  
9 elect to withdraw the entire amount in the member's annuity savings  
10 account before the member is eligible to do so at retirement under  
11 IC 5-10.2-4-2:

12 (1) The member has attained vested status in the fund.

13 (2) The member ~~terminates~~ **has terminated** employment with the  
14 applicable fund ~~after the date specified in subsection (a).~~ **and is**  
15 **not currently employed in a covered position.**

16 (3) The member has not performed any service in a position  
17 covered by the fund for at least ~~ninety (90)~~ **thirty (30)** days after



C  
o  
p  
y

the date the member terminates employment.

**(4) The member makes the election described in this subsection:**

**(A) after December 31, 2008, if the member is a member of the public employees' retirement fund; or**

**(B) after June 30, 2009, if the member is a member of the Indiana state teachers' retirement fund.**

**(5) Except as provided in subsection (b), the member is not eligible for a reduced or unreduced retirement on the date the fund receives notice of the election described in this subsection.**

**(b) The requirement described in subsection (a)(5) does not apply to a member of the public employees' retirement fund who:**

**(1) was eligible for a reduced or unreduced retirement; and**

**(2) received a distribution under this section;**

**after December 31, 2008, and before January 1, 2010.**

(c) A member who elects to withdraw the entire amount in the member's annuity savings account under subsection ~~(b)~~ (a) shall provide notice of the election on a form provided by the board.

(d) The election to withdraw the entire amount in the member's annuity savings account is irrevocable.

(e) The board shall pay the amount in the member's annuity savings account as a lump sum.

(f) Except as provided in subsection (g), a member who makes a withdrawal under this section is entitled to receive, when the member becomes eligible to receive a retirement benefit under IC 5-10.2-4, a retirement benefit equal to the pension provided by employer contributions computed under IC 5-10.2-4.

(g) A member who:

(1) transfers creditable service earned under the fund to another governmental retirement plan under section 1(i) of this chapter; and

(2) withdraws the member's annuity savings account under this section to purchase the service;

may not use the transferred service in the computation of a retirement benefit payable under subsection (f).

SECTION 2. IC 5-10.2-3-7.5, AS AMENDED BY P.L.113-2009, SECTION 1, AND AS AMENDED BY P.L.115-2009, SECTION 2, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7.5. (a) *This subsection applies to members who die after March 31, 1990, and before January 1, 2007.* A surviving dependent or surviving spouse of a member who dies in

C  
o  
p  
y



service is entitled to a survivor benefit if:

~~(1) the member dies after March 31, 1990;~~

~~(2)~~ (1) the member has:

(A) at least ten (10) years of creditable service, if the member died in service as a member of the general assembly;

(B) at least fifteen (15) years of creditable service, if the member died in service in any other position covered by the retirement fund; or

(C) at least ten (10) years but not more than fourteen (14) years of creditable service if the member:

(i) was at least sixty-five (65) years of age; and

(ii) died in service in a position covered by the teachers' retirement fund; and

~~(3)~~ (2) the surviving dependent or surviving spouse qualifies for a survivor benefit under subsection ~~(b)~~ (c) or ~~(c)~~ (d).

*(b) This subsection applies to members who die after December 31, 2006. A surviving dependent or surviving spouse of a member who dies is entitled to a survivor benefit if:*

*(1) the member has:*

*(A) at least ten (10) years of creditable service, if the member died in service as a member of the general assembly;*

*(B) at least ten (10) years but not more than fourteen (14) years of creditable service if the member was at least sixty-five (65) years of age and died in service in a position covered by the fund (other than a position described in clause (A)); or*

*(C) at least fifteen (15) years of creditable service, if the member died in service in a position covered by the fund (other than a position described in clause (A)); and*

*(2) the surviving dependent or surviving spouse qualifies for a survivor benefit under subsection (c) or (d).*

~~(b)~~ (c) If a member described in subsection (a) or (b) dies with a surviving spouse who was married to the member for at least two (2) years, the surviving spouse is entitled to a survivor benefit equal to the monthly *pension* benefit that would have been payable to the spouse under the joint and survivor option of IC 5-10.2-4-7 upon the member's death following retirement at:

(1) fifty (50) years of age; or

(2) the actual date of death;

whichever is later. However, benefits payable under this subsection are subject to subsections ~~(e)~~ (f) and ~~(g)~~ (h).

~~(c)~~ (d) If a member described in subsection (a) or (b) dies without a surviving spouse who was married to the member for at least two (2)

C  
O  
P  
Y



years, but with a surviving dependent, the surviving dependent is entitled to a survivor benefit in a monthly amount equal to the actuarial equivalent of the monthly *pension* benefit that would have been payable to the spouse (assuming the spouse would have had the same birth date as the member) under the joint and survivor option of IC 5-10.2-4-7 upon the member's death following retirement at:

(1) fifty (50) years of age; or

(2) the actual date of death;

whichever is later. If there are two (2) or more surviving dependents, the actuarial equivalent of the benefit described in this subsection shall be calculated and, considering the dependents' attained ages, an equal dollar amount shall be determined as the monthly *pension* benefit to be paid to each dependent. Monthly *pension* benefits under this subsection are payable until the date the dependent becomes eighteen (18) years of age or dies, whichever is earlier. However, if a dependent has a permanent and total disability (using disability guidelines established by the Social Security Administration) at the date the dependent reaches eighteen (18) years of age, the monthly *pension* benefit is payable until the date the dependent no longer has a disability (using disability guidelines established by the Social Security Administration) or dies, whichever is earlier. Benefits payable under this subsection are subject to subsections ~~(e)~~ (f) and ~~(g)~~ (h).

~~(d)~~ (e) *This subsection applies if a member did not designate a beneficiary or the designated beneficiary does not survive the member.* Except as provided in subsections ~~(e)~~ (f) and ~~(h)~~ (i), the surviving spouse or surviving dependent of a member who is entitled to a survivor benefit under subsection ~~(b)~~ (c) or ~~(c)~~ (d) or section 7.6 of this chapter may elect to receive a lump sum payment of the total amount credited to the member in the member's annuity savings account or an amount equal to the member's federal income tax basis in the member's annuity savings account as of December 31, 1986. A surviving spouse or surviving dependent who makes such an election is not entitled to an annuity as part of the survivor benefit under subsection ~~(b)~~ (c) or ~~(c)~~ (d) or section 7.6 of this chapter to the extent of the lump sum payment.

~~(e)~~ (f) If a member *described in subsection (a) or (b) or section 7.6(a) of this chapter* is survived by a designated beneficiary, *who is not a surviving spouse or surviving dependent entitled to a survivor benefit under subsection (c) or (d) or section 7.6 of this chapter*, the following provisions apply:

(1) If the member is survived by one (1) designated beneficiary, the designated beneficiary is entitled to receive in a lump sum or over a period of up to five (5) years, as elected by the designated

C  
o  
p  
y



beneficiary, the amount credited to the member's annuity savings account, less any disability benefits paid to the member.

(2) If the member is survived by two (2) or more designated beneficiaries, the designated beneficiaries are entitled to receive in a lump sum or over a period of up to five (5) years, as elected by the designated beneficiary, equal shares of the amount credited to the member's annuity savings account **unless the member has allocated the shares among the designated beneficiaries in a manner authorized under IC 5-10.3-8-15 or IC 5-10.4-4-10**, less any disability benefits paid to the member.

(3) If the member is also survived by a spouse or dependent who is entitled to a survivor benefit under subsection ~~(b)~~ (c) or ~~(c)~~ (d) or section 7.6 of this chapter, the surviving spouse or dependent is not entitled to an annuity or a lump sum payment as part of the survivor benefit, unless the surviving spouse or dependent is also a designated beneficiary.

~~(f)~~ (g) If a member dies:

(1) without a surviving spouse or surviving dependent who qualifies for survivor benefits under subsection ~~(b)~~ (c) or ~~(c)~~ (d) or section 7.6 of this chapter; and

(2) without a surviving designated beneficiary who is entitled to receive the member's annuity savings account under subsection ~~(e)~~ (f);

the amount credited to the member's annuity savings account, less any disability benefits paid to the member, shall be paid to the member's estate.

~~(g)~~ (h) Survivor benefits payable under this section or section 7.6 of this chapter shall be reduced by any disability benefits paid to the member.

~~(h)~~ (i) Additional annuity contributions, if any, shall not be included in determining survivor benefits under subsection ~~(b)~~ (c) or ~~(c)~~ (d) or section 7.6 of this chapter, but are payable in a lump sum payment to:

(1) the member's surviving designated beneficiary; or

(2) the member's estate, if there is no surviving designated beneficiary.

~~(i)~~ (j) Survivor benefits provided under this section or section 7.6 of this chapter are subject to IC 5-10.2-2-1.5.

~~(j)~~ (k) A benefit specified in this section shall be forfeited and credited to the member's retirement fund if no person entitled to the benefit claims it within three (3) years after the member's death. However, the board may honor a claim that is made more than three (3) years after the member's death if the board finds, in the board's

C  
o  
p  
y



discretion, that:

(1) the delay in making the claim was reasonable or other extenuating circumstances justify the award of the benefit to the claimant; and

(2) paying the claim would not cause a violation of the applicable Internal Revenue Service rules.

SECTION 3. IC 5-10.3-8-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 15. The board may adopt rules to allow a member who designates more than one (1) beneficiary to allocate benefit shares in percentage increments.**

SECTION 4. IC 5-10.4-4-10, AS AMENDED BY P.L.115-2009, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) The director shall obtain a designation of beneficiary as soon as possible from each member.

**(b) The board may adopt rules to allow a member who designates more than one (1) beneficiary to allocate benefit shares in percentage increments.**

~~(b)~~ (c) Notwithstanding a contrary collateral agreement, court order, process, attachment, or levy, the right to receive a death benefit under IC 5-10.2 or this article vests with the designated beneficiary on file with the fund at the time of the member's death. The fund shall distribute the death benefit to the designated beneficiary or the designated beneficiary's estate in accordance with IC 5-10.2 and this article.

SECTION 5. IC 36-8-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

**(b) Except as provided in section 24 of this chapter,** each fund member who qualifies for a retirement benefit payment under section 10(b) of this chapter is entitled to receive a monthly benefit equal to fifty percent (50%) of the monthly salary of a first class patrolman or firefighter in the year the member ended his active service plus:

(1) for a member who retires before January 1, 1986, two percent (2%) of that salary for each full year of active service; or

(2) for a member who retires after December 31, 1985, one percent (1%) of that salary for each six (6) months of active service;

over twenty (20) years, to a maximum of twelve (12) years.

(c) Each fund member who qualifies for a retirement benefit payment under section 10(c) of this chapter is entitled to receive a monthly benefit equal to fifty percent (50%) of the monthly salary of

C  
o  
p  
y



1 a first class patrolman or firefighter in the year the member ended ~~his~~  
 2 **the member's** active service plus one percent (1%) of that salary for  
 3 each six (6) months of active service over twenty (20) years, to a  
 4 maximum of twelve (12) years, all actuarially reduced for each month  
 5 (if any) of benefit payments prior to fifty-two (52) years of age, by a  
 6 factor established by the fund's actuary from time to time.

7 SECTION 6. IC 36-8-8-15 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 15. Each year the PERF  
 9 board shall determine if there has been an increase or decrease in the  
 10 consumer price index (United States city average) prepared by the  
 11 United States Department of Labor by comparing the arithmetic mean  
 12 of the consumer price index for January, February, and March of that  
 13 year with the arithmetic mean for the same three (3) months of the  
 14 preceding year. If there has been an increase, or a decrease, it shall be  
 15 stated as a percentage of the arithmetic mean for the preceding three  
 16 (3) month period. The percentage shall be rounded to the nearest  
 17 one-tenth of one percent (0.1%) and may not exceed three percent  
 18 (3%). **If there is a percentage increase of the arithmetic mean for**  
 19 **the preceding three (3) month period**, a fund member's or survivor's  
 20 monthly benefit, beginning with the July payment, shall be increased  
 21 ~~or decreased~~ by an amount equal to the June payment times the  
 22 percentage increase. ~~or decrease~~. However, a fund member's or  
 23 survivor's monthly benefit may not be increased ~~or decreased~~ under this  
 24 section until July of the year following the year of the first monthly  
 25 benefit payment to the fund member or survivor. In computing a fund  
 26 member's benefit, the increase ~~or decrease~~ is based only on those years  
 27 for which the fund member was eligible for benefit payments under this  
 28 chapter. A monthly benefit may not be reduced ~~below the amount of~~  
 29 ~~the first monthly benefit received by the fund member or survivor~~. **if**  
 30 **there is a percentage decrease of the arithmetic mean for the**  
 31 **preceding three (3) month period.**

32 SECTION 7. IC 36-8-8-19 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 19. (a) The baseline  
 34 statewide physical examination required by section 7(a) of this chapter  
 35 shall be prescribed by the PERF board and shall be administered by the  
 36 appointing authority, as determined by the local board, after the  
 37 appointing authority extends a conditional offer for employment. The  
 38 baseline statewide physical examination shall be administered by a  
 39 licensed physician and must include all of the following:

- 40 (1) A general medical history.
- 41 (2) The tests identified in rules that shall be adopted by the PERF
- 42 board under IC 4-22-2.

C  
o  
p  
y





(b) The PERF board shall adopt minimum standards by rule under IC 4-22-2 that a police officer or firefighter must meet for the baseline statewide physical examination described in subsection (a). The baseline statewide physical examination and related standards must:

- (1) reflect the essential functions of the job;
- (2) be consistent with business necessity; ~~and~~
- (3) be reviewed by the 1977 fund advisory board; **and**
- (4) be evaluated by the PERF board one (1) time before January 1, 2015, and every five (5) years thereafter.**

(c) The PERF board shall, in consultation with the commissioner of mental health, select the baseline statewide mental examination described in section 7(a) of this chapter. The standards for passing the baseline statewide mental examination shall be determined by the local board. The baseline statewide mental examination and related standards must:

- (1) reflect the essential functions of the job;
- (2) be consistent with business necessity; ~~and~~
- (3) be reviewed by the 1977 fund advisory board; **and**
- (4) be evaluated by the PERF board one (1) time before January 1, 2015, and every five (5) years thereafter.**

The purpose of the baseline statewide mental examination is to determine if the police officer or firefighter is mentally suitable to be a member of the department. The local board may designate a community mental health center or a managed care provider (as defined in IC 12-7-2-127(b)), a hospital, a licensed physician, or a licensed psychologist to administer the examination. However, the results of a baseline statewide mental examination shall be interpreted by a licensed physician or a licensed psychologist.

(d) The employer shall pay for no less than one-half (1/2) the cost of the examinations.

(e) Each local board shall name the physicians who will conduct the examinations under this section.

(f) If a local board determines that a candidate passes the local physical and mental standards, if any, established under IC 36-8-3.2-6, the baseline statewide physical examination described in subsection (a), and the baseline statewide mental examination described in subsection (c), the local board shall send the following to PERF:

- (1) Copies and certification of the results of the baseline statewide physical examination described in subsection (a).
- (2) Certification of the results of the physical agility examination required under IC 36-8-3.2-3 or IC 36-8-3.2-3.5.
- (3) Certification of the results of the baseline statewide mental

C  
o  
p  
y



examination described in subsection (c).

(g) The PERF board or the PERF board's designee shall then determine whether the candidate passes the baseline statewide physical standards adopted under subsection (b). If the candidate passes the baseline statewide standards, the PERF board or the PERF board's designee shall also determine whether the candidate has a Class 3 excludable condition under section 13.6 of this chapter. The PERF board or the PERF board's designee shall retain the results of the examinations and all documents related to the examination until the police officer or firefighter retires or separates from the department.

(h) To the extent required by the federal Americans with Disabilities Act, the PERF board shall do the following:

(1) Treat the medical transcripts, reports, records, and other material compiled under this section as confidential medical records.

(2) Keep the transcripts, reports, records, and material described in subdivision (1) in separate medical files for each member.

(i) A local board may, at the request of an appointing authority or on the local board's own motion, issue subpoenas, discovery orders, and protective orders in accordance with the Indiana Rules of Trial Procedure to facilitate the receipt of accurate and original documents necessary for the proper administration of this chapter. A subpoena or order issued under this subsection:

(1) must be served in accordance with the Indiana Rules of Trial Procedure; and

(2) may be enforced in the circuit or superior court with jurisdiction for the county in which the subpoena or order is served.

SECTION 8. IC 36-8-8-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 24. (a) This section does not apply to a fund member who elects to enter the DROP (as defined in IC 36-8-8.5-4) under IC 36-8-8.5.**

**(b) Benefits paid under this section are subject to section 2.5 of this chapter.**

**(c) As used in this section, "partial lump sum distribution" means the amount calculated under subsection (f).**

**(d) After June 30, 2010, a fund member may elect to receive at retirement a partial lump sum distribution if the fund member meets all of the following requirements on the date of the election:**

**(1) The fund member is in active service.**

**(2) The fund member qualifies for a retirement fund benefit**

C  
o  
p  
y



payment under section 10(b) of this chapter.

(e) A fund member's election under subsection (d):

(1) must be in writing;

(2) must be filed with the PERF board, on a form prescribed by the PERF board; and

(3) is irrevocable.

(f) The partial lump sum distribution for a fund member who makes an election described in subsection (d) is determined in STEP TWO of the following formula:

STEP ONE: Determine the lesser of the following:

(A) The fund member's years of service for which the fund member has received service credit in the fund.

(B) Thirty-two (32).

STEP TWO: Multiply the STEP ONE amount by the fund member's monthly benefit calculated under section 11(b) of this chapter.

(g) The monthly benefit of a fund member who receives a partial lump sum distribution under this section is actuarially reduced by subtracting an amount determined by dividing the partial lump sum distribution amount determined in subsection (f) by a rate, determined by the actuary for the fund, that is:

(1) based on the age of the fund member and, if applicable, the age of the fund member's spouse at the time the fund member elects to take the partial lump sum distribution; and

(2) computed to result in a monthly benefit amount that has an actuarial present value that approximates the partial lump sum distribution amount.

(h) A fund member who makes an election described in subsection (d) must elect to receive the partial lump sum distribution determined in subsection (f) as:

(1) a lump sum paid not later than thirty (30) days after the fund member's retirement date; or

(2) three (3) equal annual payments commencing not later than thirty (30) days after the fund member's retirement date and thereafter paid on the anniversary of the fund member's retirement date.

(i) This section expires July 1, 2012.

SECTION 9. An emergency is declared for this act.

C  
o  
p  
y

